Supreme Court, U. S.
FILED
JAN 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1102

JAMES L. PICKERING,
Petitioner-Appellant,

v.

COUNTY OF ERIE, NEW YORK,
Respondent-Appellee.

JURISDICTIONAL STATEMENT

JAMES L. PICKERING, *Pro Se*
Petitioner-Appellant
Hand Road
Chaffee, New York 14030

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
(716) 344-3000

INDEX.

	Page
Jurisdictional Statement	1
Opinions Below	2
Statement	3
The Question is Substantial	6
Notice of Appeal to United States Supreme Court	7
Receipt for Certified Mail	9
Order, Judgment and Decree of the United States Court of Appeals, Second Circuit	10
Notice of Judgment Dated October 17, 1978	12
Notice of Judgment Dated January 11, 1979	15
Complaint Amendae—Petitioner November 28, 1978	17
Complaint—Petitioner April 20, 1978	24
Affidavit of Michele Pickering	29

CASE CITED.

Roe v. Doe 1971 29NY188,NYS 2d71, 272NE2d567	5

STATUTE.

Title 42 Subchapter 1 Section 1985 Par. 3 of United States Code	2,6

II.

Page

CONSTITUTION.

United States Constitution:
Amendment VI 2
Amendment IX 2,5
Art. I 2,6
Art. I Section 10 4
Art. I Section 10 Par. 1 2
Art. III Section 2.. 2

IN THE

Supreme Court of the United States

October Term, 1979

No. .....

JAMES L. PICKERING,

Appellant,

v.

COUNTY OF ERIE, NEW YORK,

Appellee.

On Appeal from the Second Circuit
Court of Appeals

Jurisdictional Statement

Appellant appeals from the Court of Appeals for the Second Circuit on appeal from the District Court for the Western District of New York entered in the Court of Appeals on the 13 day of November 1979 affirming dismissal in the District Court for failure to allege a claim upon which relief can be granted and that the Court lacks monetary jurisdiction. This Statement is submitted to show that the Supreme Court of the United States has Jurisdiction and that the question is substantial.

Opinions Below

The Opinion of the Circuit Court is appended as page 10.

The Opinion of the District Court is appended as page 15.

This suit was brought in the District Court under Title 42 Subchapter 1 Section 1985 Par. 3 of United States Code and Art. I Amendments to Constitution of the United States.

After a Family Court Judge of Erie County violated Art. I Section 10 Par. 1 of the Constitution of the United States, the necessary documentation to establish both the constitutional violation and the monetary jurisdiction of the District Court and the necessary documentation to establish a conspiracy within the Family Court of Erie County and the documentation necessary to establish Department of Social Services' personnel participated in that conspiracy. The federal Court action became necessary after the state courts persistently attempted to cover up the violation and succeeded in doing so. (The Family Court Judge was subsequently censured by the State Commission on Judicial Conduct which was set up by the Governor and later by the State Legislature based in part upon evidence gathered in this case). In addition to the Violation of Art. I Section 10 Par. 1 of the Constitution of the United States Amendment VI and Amendment IX of the Constitution of the United States were violated. The Jurisdiction of the Supreme Court is hereby invoked by authority of both Art. I Amendments to Constitution of the United States and Art. III Section 2 of the Constitution itself.

Judgment was entered in the District Court on May 21, 1979 and affirmed by Court of Appeals on Nov. 13, 1979. Judgments were filed in the Courts named on the dates stated.

The Constitution of the United States itself is sufficient statutory jurisdiction for the appeal.

Petitioner believes this case to be unique and knows of no other case law on the subject.

The question presented is:

1. May the district court in special term dismiss a petition of a CITIZEN *PRO SE*, who has demanded TRIAL BY JURY, without even looking at the documentary evidence establishing the monetary jurisdiction of the Court or the documentation establishing the conspiracy after it has been found to have misfiled the papers citing the facts necessary to establish the conspiracy?

2. May the District Court dismiss in Special Term a civil action which charges a violation of the Constitution of the United States as a secondary charge.

Statement

Petitioner, a citizen of the United States, appeared in Family Court on Aug. 13, 1974. Petitioner was at the time living with his wife in his home with the children. Family Court had an off the record discussion and directed petitioner to give his wife $100.00 per week. T. Molik of Erie County Social Services appeared with Petitioner's wife. In October 1972 this same T. Molik conspired with the natural daughter of Petitioner and effected a runaway situation. The daughter at the time was a minor of 14 or 15 years old. The official transcript of Family Court for 13 Aug. 1974 has no record of how the jurisdiction was obtained or any evidence to sustain the $100.00 per week award. On 6 December 1974 the parties again appeared again in Family Court. On pages 2 and 3 of the official transcript T. Molik deliberately lied to the Family Court as to the amount of food in the house and the facilities.

On this date the Family Court violated Art. I Sect. 10 of the Constitution of the United States in ordering $100.00 per week by wage deduction. Federal monetary jurisdiction begins at this point.

On 3 Nov. 1975, Petitioner and his wife appeared *pro se* in Family Court without T. Molik present. Petitioner's wage deduction was modified to $70.00 per week and Petitioner's wife was told by the Court "Well, some night you ought to hit him on the head with an axe and it will be all over". Federal Financial Jurisdiction is now in the neighborhood of $5000.00. On Nov. 4, 1976 Petitioner and his wife appeared *pro se* again in Family Court. Transcript documents partial abandonment on the part of the wife. On 9 January 1977 Petitioner and wife again appeared in Family Court. The Transcript documents that the Issue at Law is constructive abandonment and Family Court refused to terminate wage deduction. Federal monetary jurisdiction is now at $8500.00 level. This transcript also has the Petitioner's citation that financial evaluation violates the United States Constitution.

The Family Court Decision of 9 Jan. 1977 was appealed to the Appellate Division which affirmed. Nov. 4, 1976 Transcript Documents signal system from Family Court Judge to Court reporter "off the Record".

Around Christmas of 1976 the daughter involved with T. Molik returned home having run away from Social Services homes about six or seven times. Social Services took no action to retake her. Because of the environment under which she was living, the possibility of drug encounters, her presence in the home with two younger boys and three girls, all natural children of the marriage, Petitioner petitioned for what is now known as an *in camera* inspection of the Social Services' records involving the troubled daughter. All appeals were denied. Notice of Claim was deposited in the United States

Post Office in Chaffee, New York on 14 May 1977. Process was served in 78-203 by United States Marshall on 4/25/78. It has been defined as a natural right in Roe v. Doe 1971 29NY188,NYS 2d71, 272NE2d567. "It is the natural right as well as the duty of the parent to protect the child from harm, etc.". This right is an unenumerated right protected by Amendment IX of the Constitution of the United States. It was unconstitutionally denied this petitioner by the Social Services Department of Erie County and its appellate executives. We have the documents to prove this. The district Court never looked at any of this evidence, lost the complaint amendae which was timely filed on 28 Nov. 1978 as Item 10 in the index, dismissed 78-203 on 11 Jan. 1979. Subsequently located complaint amendae which contains 54 separate facts sufficient to document *prima facie* case of Violation of Constitution of the United States as to contract of wages and marriage and the denial of the unenumerated right to protect Petitioner's family under Amendment IX and the constructive conspiracy which resulted in the Constitutional violations cited.

On 21 May 1979 in less than two minutes without viewing any evidence as to jurisdiction or *prima facie* case District Court again dismissed. Court of Appeals affirmed on 13 Nov. 1979 on the record again without viewing any evidence or permitting oral argument. In January of 1980 more than $20,000.00 will have been taken unconstitutionally from my contract for wages, my wife will have totally abandoned this family for more than a year, and the necessary records which I am entitled to will have been denied me for 30 months or more, all while the kids live with me.

On 12-26-79 Petitioner mailed Notice of Appeal to the United States Supreme Court to Court of Appeals and defendant from Chaffee P.O.

The Question is Substantial

The question presented is substantial and unique in that it carefully documents Constitutional Violations, conspiracy in violation of Title 42 Subchapter 1 Sect. 1985 par. 3 and petitions the Supreme Court and lower Courts by way of Art. I Amendments to the Constitution itself. It seeks to establish clearly for the nation the Constitutional protection for contracts of wages and marriage and the natural rights of parents and trial by jury. Further it seeks to settle the question of conspiracy in violation of Sect. 1985 Par. 3 of Title 42 subchapter 1 United States Code. Further indirectly it seeks to set standards beyond which judges both Federal and State cannot go in dealing with married partners who elect not to legally terminate their marriage contract.

It is submitted that the issues raised by the complaint and complaint amendae are ripe for judicial determination and that both the District Court and the Court of Appeals erred in dismissal.

Respectfully submitted,

JAMES L. PICKERING,
James L. Pickering,
Petitioner Pro Se.

12 26 79

Notice of Appeal to
United States Supreme Court

UNITED STATES COURT OF APPEALS
For the Second Circuit

JAMES L. PICKERING,
Hand Road, Chaffee, New York 14030,
Petitioner.

v.

COUNTY OF ERIE, NEW YORK,
95 Franklin Street,
Buffalo, New York 14202,
Respondent.

79-7400

Please take notice that the above named Petitioner/Appellant hereby appeals to United States Supreme Court from the order, judgment and decree of the Second Circuit Court of Appeals in this Action, dated and filed in the office of the Clerk of said Court of Appeals on 13 Nov. 79 or thereabouts and from each and every part thereof.

This appeal is taken to the Supreme Court of the United States by authority of Art. I Amendments to Constitution of

the United States and Art. III Sect. 2 of Constitution of the United States.

JAMES L. PICKERING,
James L. Pickering *Pro Se*,
Hand Road,
Chaffee, New York 14030.

12 26 79

No. 756298

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO
Erie County Att
STREET AND NO.
95 Delaware Ave
P.O. STATE AND ZIP CODE
Buffalo NY 1420

POSTAGE	$ 15
CERTIFIED FEE	80 ¢
SPECIAL DELIVERY	¢
RESTRICTED DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED	45¢
SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES	$ 140
POSTMARK OR DATE	DEC 26 1979

CONSULT POSTMASTER FOR FEES
OPTIONAL SERVICES
RETURN RECEIPT SERVICE

PS Form 3800, Apr. 1976

No. 756299

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO
U.S. Court of Appeals
STREET AND NO.
Foley Sq.
P.O. STATE AND ZIP CODE
New York, N.Y. 10007

POSTAGE	$ 15
CERTIFIED FEE	80 ¢
SPECIAL DELIVERY	¢
RESTRICTED DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED	45¢
SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES	$ 140
POSTMARK OR DATE	DEC 26 1979

CONSULT POSTMASTER FOR FEES
OPTIONAL SERVICES
RETURN RECEIPT SERVICE

PS Form 3800, Apr. 1976

Order, Judgment and Decree of the United States Court of Appeals, Second Circuit

UNITED STATES COURT OF APPEALS
For the Second Circuit

United States Court of Appeals
Filed
NOV 13 1979
A. (ILLEGIBLE), Clerk
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 13th day of November, one thousand nine hundred and seventy-nine.

Present:

HONORABLE WILFRED FEINBERG
HONORABLE WALTER R. MANSFIELD
Circuit Judges
HONORABLE JACOB MISHLER
Ch. District Judge

Order, Judgment and Decree of the United States Court of Appeals, Second Circuit.

JAMES L. PICKERING,
Plaintiff-Appellant,

against

COUNTY OF ERIE,
Defendant-Appellee.

79-7400

Appeal from the United States District Court
for the Western District
of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was submitted by plaintiff-appellant *pro se* and by counsel for defendant-appellee.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is AFFIRMED for the reasons given in the Order of Judge Curtin, filed May 21, 1979.

WILFRED FEINBERG,
Wilfred Feinberg,

WALTER R. MANSFIELD,
Walter R. Mansfield,
Circuit Judges,

JACOB MISHLER,
Jacob Mishler, *Ch. District Judge.*

Notice of Judgment Dated October 17, 1978

UNITED STATES DISTRICT COURT
Western District of New York

JAMES L. PICKERING,

vs.

COUNTY OF ERIE, N.Y.

Civ-78-203

SIR: Take notice of a JUDGMENT, of which the within is a copy duly granted in the within entitled action on the 17th day of October, 1978, and entered in the OFFICE of the Clerk of the United States District Court, Western District of New York, on the 17th day of October, 1978.

Dated: Buffalo, New York,
October 17, 1978.

JOHN K. ADAMS, Clerk,
U.S. DISTRICT COURT,
U.S. Courthouse,
Buffalo, New York 14202.

TO: James L. Pickering,
Plaintiff.

TO: T. J. Szymanski, Esq.,
Attorney for Defendant.

Notice of Judgment Dated October 17, 1978.

JUDGMENT

UNITED STATES DISTRICT COURT
Western District of New York

JAMES L. PICKERING,
Hand Road, Chaffee, New York,
Plaintiff.

vs.

COUNTY OF ERIE, N.Y.,
95 Franklin Street, Buffalo, New York,
Defendant.

CIV. 78-203

Plaintiff's Complaint herein having been dismissed on the 21st day of December, 1978 for failure to allege facts sufficient to support the claim and granting plaintiff sixty (60) days to amend the Complaint, and the Court having treated Plaintiff's "complaint amendae" dated November 29, 1978 as an application to vacate the judgment entered January 11, 1979, finally dismissing the complaint for failure to file an amended complaint, and the Court having treated defendant's motion to dismiss the "complaint amendae" and affidavit of Justyn E. Miller sworn to December 20, 1978 as an affidavit in opposition to the application to vacate the judgment or, in the alternative, for judgment dismissing the amended complaint pursuant to Rules 41(b) and 12(b) of the

Notice of Judgment Dated October 17, 1978.

Federal Rules of Civil Procedure, and the motions having regularly come on to be heard at a Special Term of this Court on the 9th day of February, 1979, and plaintiff's motion to vacate the judgment having been granted and defendant's cross-motion to dismiss the amended complaint also having been granted,

NOW, on motion of JAMES L. PICKERING, the plaintiff, *pro se*, and on the cross-motion of JUSTYN E. MILLER, counsel for the defendant, it is

ORDERED and ADJUDGED, that the judgment of this Court entered on the 11th day of January, 1979 dismissing the original complaint for failure to file an amended complaint within sixty (60) days be vacated; and it is further

ORDERED and ADJUDGED, that the complaint and amended complaint be dismissed on the merits for failure to state facts sufficient to allege a claim upon which relief can be granted, and upon the further grounds that the Court lacks jurisdiction because the amount in controversy is less than TEN THOUSAND DOLLARS ($10,000.00) exclusive of interest and costs.

JOHN T. CURTIN.

GRANTED:

Notice of Judgment Dated January 11, 1979

UNITED STATES DISTRICT COURT
Western District of New York

JAMES L. PICKERING,

vs.

COUNTY OF ERIE.

Civ-78-203

SIR: Take notice of a JUDGMENT, of which the within is a copy duly granted in the within entitled action on the 11th day of January, 1979, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 11th day of January, 1979.

Dated: Buffalo, New York,
January 11, 1979.

JOHN K. ADAMS, Clerk,
U.S. District Court,
U.S. Courthouse,
Buffalo, New York 14202.

TO: James L. Pickering,
Plaintiff.

TO: T. J. Szymanski, Esq.,
Attorney for Defendant.

Notice of Judgment Dated January 11, 1979.

JUDGMENT

UNITED STATES DISTRICT COURT
for the
Western District of New York

JAMES L. PICKERING,

vs.

COUNTY OF ERIE.

Civil Action File No. 78-203

This action came on for ~~trial~~ (hearing) before the Court, Honorable John T. Curtin, United States District Judge, presiding, and the issues having been duly ~~tried~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged the complaint is dismissed for failure of the plaintiff to file an amended complaint.

Dated at Buffalo, New York, this 11th day of January, 1979.

JOHN K. ADAMS,
Clerk of Court.

Complaint Amendae—Petitioner
November 28, 1978

UNITED STATES DISTRICT COURT
Western District of New York

JAMES L. PICKERING,
Hand Road, Caffee, New York,
Plaintiff-Petitioner,

v.

COUNTY OF ERIE,
95 Franklin Street,
Buffalo, New York.

Civ 78-203

Pursuant to order dated 17 October 1978 Complaint is amended as follows:

Facts

1. It has been defined in complaint 9b. "It is natural right as well as legal duty of parent to care for, control and protect from potential harm, .whatever the source, and absent clear showing of neglect, Etc."

2. This right is protected by "equal protection of the law" clause Art. XIV Sect. 1 amendments to Constitution of the United States to both parents.

3. The right *per se* existed in common law before statutory and/or case law definition and accordingly is protected by ninth amendment United States Constitution.

4. On or about Oct. 1973 Theresa Molik and others conspired and effected a runaway by and with Michele Pickering, Petitioner's natural daughter.

5. Margaret Glass constructively threatened petitioner in letter dated October 2, 1973.

6. Frank C. Riso deleted all testimony in transcript August 13, 1974 except monetary award.

7. Mr. Cunningham reported to court Aug. 13, 1974 "can see no reason why these people are here" as per Judge Trost.

8. Judge Trost personally promulgated an inter family argument in court on Aug. 13, 1974.

9. There is no jurisdictional basis established in transcript Aug. 13, 1974.

10. Petitioner was unable to sustain appeals because of lack of facts in transcript 13 Aug. 1974.

11. Theresa Molik lied in Family Court Transcript dated December 6, 1974.

12. Erie County Social Services officially closed investigation into Michele Pickering case on 18 June 1975 with investigation report that charge is UNFOUNDED.

13. Erie County Social Services NEVER notified petitioner of facts 12.

14. Petitioner does not know if facts 12 was reported to Family Court.

15. Junior members of family than Michele reside with Petitioner.

16. Dialogue was and has been continually maintained between Michele and other junior family members.

17. Facts 1 exists with respect to junior family members as well as Michele.

18. Complaint 7 J&K and Mr. Mc Carthy along with Complaint 7 L&M conspired and impeded 17 Facts.

19. Complaint 7-P on 3 August 1976 had petitioner sign blank form 4-17a and changed respondent's address from the handwritten verbiage which was to be typed onto the blank.

20. Respondent, Complaint 19 at the time was staying at 126 F. Lawn Ave., Buffalo, New York.

21. Complaint 7 B injected into trial record facts that were not true, on 4 Nov. 1976.

22. Complaint 7b having no power to order financial evaluation dismissed Petitioner's petition for failure to comply when financial evaluation was NOT the issue before the Court, thereby exercising illegal duress, on 19 January 1977.

23. Petitioner's wife Rita was served for appeal purposes to the Appellate Division Rochester at 126 F. Lawn Ave., Buffalo, N.Y.

24. Petitioner's wife appeared and defended herself in Rochester.

25. Because of the distortion of facts by Defendant's agents in the course of their official duties Petitioner lost appeal in Rochester.

26. At the inception of this charade of facts Petitioner and his wife resided at Hand Road, Chaffee, N.Y. along with their children.

27. As of this date Petitioner's wife still resides at 126 F. Lawn Ave., Buffalo, New York.

28. Petitioner has resided continuously from Facts 26 to date at Hand Road, Chaffee, New York.

29. Petitioner's children have resided continuously from Facts 26 to date at Hand Road, Chaffee, New York with their father.

30. Defendant's agents have taken in excess of $10,000.00 of Petitioner's Contract Wages in violation of Art. 1 Sect. 10 par. 1 Constitution of the United States.

31. Defendant's agents have failed to give Petitioner full equal protection of the law and have contrived to deny it to him in violation of Art. XIV Sect. 1 Amendments to Constitution of the United States.

32. Defendant's agents have fostered, caused and shielded the estrangement of Petitioner's wife both from the Petitioner and their children.

33. Defendant's agents have failed to provide a Jury to try the Issues in Family Court.

34. Defendant's agent Complaint 7a seized jurisdiction without proper foundation. No hearing was ever held in Family Court on any other charges other than support.

35. Family Court must obtain jurisdiction by some other statute section before it can entertain or issue a support order.

36. Complaint 7E attempted to cover up the lack of initiating Jurisdiction on 23 July 1975.

37. Defendant and/or its agents have no authority to impair the Contract of Marriage, Art. 1 Sect. 10 par. 1 Constitution of the United States.

38. There is not now nor has there ever been a suit at law on contract violation of marriage by either the Petitioner or his wife.

39. Complaint 7H initiated the proceedings on Dec. 6, 1974 which resulted in the confiscation of contract funds in Facts 30.

40. Defendant's agents have caused a pre endorsement stamp "I request continued support services be provided (these words are not readable on the xerox copy) pursuant to Title IV-D of the social security act", on Check No. 037907 Erie County Support Collection Unit.

41. United States Code 42 No. 651 thru 662 comprising IV-D pertains to "absent fathers".

42. Petitioner is not now and never has been an absent father.

43. Petitioner has never been tried under USC 42/651-662 (IV-D).

44. In researching documents for this case Family Court record clerk removed over half of the file content before handing the file to Petitioner when he appeared to search the record.

45. Petitioner has had his personal reputation impaired financially due to his impairment of the control of his finances by Defendant's agents.

46. Petitioner has suffered personal anguish and stress due to the Facts 32.

47. Petitioner has suffered financial losses due to unnecessary legal expense caused by Defendant's agents.

48. Complaint 7 A told Petitioner he was NOT entitled to an accounting of the funds seized.

49. Order of Support was not issued for wife only children in the original instance.

50. Defendant through its agents has persisted in covering up its errors and continuing to deprive the Petitioner of Equal protection of the law. Even to the extent of lying to this Court through its pleadings.

51. From the inception of the marriage contract up to Facts 26 Petitioner has consistently supported more family members than The United States Bureau of Labor Statistics shows can be supported by Petitioner's earnings for each calendar year.

52. The intent of the legislature was that Family Court be a problem SOLVING court not a problem creating court.

53. Complaint 7 A ordered a search of defendant's house by Complaint 7-G on 13 August 1974 in violation of Art. IV amendments to Constitution of the United States.

54. Defendant's agents have failed to account and pay properly.

JAMES L. PICKERING,
Petitioner,
11/29/78.

PATRICIA M. GILL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1980

James L. Pickering *Pro Se.*
Hand Road,
Chaffee, New York 14030.

to

T. J. Szymanski,
County Attorney,
Erie County,
25 Delaware Ave.,
Buffalo, New York 14202.

Complaint—Petitioner April 20, 1978

In The
UNITED STATES DISTRICT COURT
For The
Western District of New York

JAMES L. PICKERING,
Hand Road, Chaffee, New York,
Plaintiff/Petitioner,

v.

COUNTY OF ERIE,
95 Franklin Street,
Buffalo, New York,
Defendant.

Plaintiff/Petitioner for his claim for relief states,

1. Jurisdiction is found in Art. I amendments to the Constitution of the United States and in Title 42 Subchapter 1, Section 1985, Par. (3) United States Code.

2. Petitioner is a citizen of the State of New York.

3. Defendant is a chartered corporate county in that State.

4. The amount in controversy exceeds the sum of ten thousand dollars ($10,000.00) exclusive of costs and interest.

5. That notice of claim has been filed with the Clerk of the County of Erie in conformance with GML of State of New York Statute.

6. That Petitioner is entitled to under the Constitution of the United States:

A. Right to face accusors, and Trial By Jury Art. VI Amendments to Constitution of the United States.

B. Be informed of Nature and Cause of accusation. Art. VI, Amendments to Constitution of the United States.

C. Right to love, affection and to protect his family from whatever cause whatsoever. Art. IX Amendments to the Constitution of the United States.

D. Right to contract protection. Art. I Sect. 10 Constitution of the United States.

7. The following employees, former employees or commission members of Erie County are not joined as parties but should be since they implemented the inequities complained of,

A. J. Douglas Trost
B. Edward V. Mazur
C. Russel J. Kock
D. Evelyn B. Frank
E. John Conable
F. John R. Waple
G. Theresa Molik
H. Fred Winter
I. Frank R. Cisco
J. Daniel T. Roach
K. Casimer Lotarski
L. John J. Barone
M. T. J. Szymanski
N. Louis J. Russo
O. Margaret Glass
P. L. Nowicki

8. The principle of conspiracy by documentation has been established in Civ-1967-432 U.S. v. Beth Steel *et al.*

9. The following public documents are hereby made a part of this Complaint,

A. Case File No. 44 (Erie County) Appellate Division Fourth Department Supreme Court, Rochester, New York. File dated 12 July 1977.

B. Roe v. Doe 1971 29ny 2d188,324 NYS2d71,272 NE2d567. (Definition of Natural right).

C. Constitution of the United States.

D. Letter dated Feb. 25, 1977 by L. J. Russo.

E. Letter dated June 8, 1977 by D. T. Roach.

F. Letter dated May 24, 1977 by D. T. Roach.

G. Letter dated Oct. 2, 1973 by M. Glass.

H. GML of State of New York.

I. Constitution of the State of New York.

10. The County of Erie is charged with constructive conspiracy to maintain a system which by its nature denies Plaintiff/Petitioner the Constitutional rights set forth in 6 in violation of Title 42, Subchapter 1, Sect. 1985, par. 3 of United States Code by construction of the facts set forth in 9 A thru I.

11. The result of the conspiracy is

A. The Loss of Contract Wages in excess of $10,000.00.

B. The *de facto* destruction of a marriage contract.

C. *De facto* alienation of affections within the family unit.

D. *De facto* alienation of Natural Rights.

12. For the purpose of establishing specific acts:

A. D. T. Roach and co denied natural rights by their action.

B. Theresa Molik either wittingly or unwittingly perjured her testimony in Family Court.

C. Family Court personnel, judges and court reporters maintain a system whereby using hand signals pertinent testimony is eliminated from the official record and in so doing are obstructing justice.

D. Erie County Social Services Dept. maintains a system which denies natural rights, shields accusors from confrontation and libels plaintiff/petitioner.

E. Family Court personnel, judges, court reporters and probation dept. people maintain a system which interferes with petitioner/plaintiff's contracts for wages, goods and services.

F. Family Court personnel and Social Services personnel maintain a system which interferes with natural rights.

13. For his relief Plaintiff/Petitioner demands,

A. All monies lost.

B. Five Million Dollars damages in mental anguish, or such amount as a jury may direct.

C. Exemplary Damages as a jury may direct.

D. Judicial declaration of unconstitutionality of GML 50-e & I New York Statutes in the following classes of cases,

1. Torts arising out of Civil Rights cases.

2. Torts arising out of Natural Rights violations.

3. Torts arising out of contract impairment violations.

14. Plaintiff/Petitioner demands trial by jury of all the issues now or hereafter involved by Common Law Jury under Art. IX Amendments to Constitution of the United States.

JAMES L. PICKERING, 4/16/78,
James L. Pickering *Pro Se.*
Hand Road,
Chaffee, New York 14030.

T. J. Szymanski,
95 Franklin Street,
Buffalo, New York 14202.

Affidavit of Michele Pickering

I, Michele Pickering, being duly sworn, depose the following:

I am the natural daughter of James and Rita Pickering. I reside at 189 Main St., Perry, New York. I am 20 years old.

On or about October of 1972 I called the Erie County Department of Welfare and spoke to a Mrs. Terry Molick who was said to be in charge of cases like mine. I told Mrs. Molick that I intended to run away from home right away. I had run away from home many times before this but either returned on my own or was returned by the authorities. Mrs. Molick asked me where I was going to run and assured me that she would not tell my parents or the authorities. We then set a meeting place and she told me she would pick me up in three days. I ran away that night and slept in the woods, the next day I called Mrs. Molick back to change the meeting place because I thought my parents knew where I was hiding. I used a phone belonging to a Mr. Allen Macumber of Gasner Road in the town of Protection. We rescheduled the meeting place and I slept in the woods again. The next day Mrs. Molick and her associates picked me up and drove me to Compass House on Linwood Avenue, known to me to be a halfway house for runaways.

I stayed in Compass House until I was placed in Foster Care.

I would like my father, James L. Pickering, to receive a copy of my files while I was in the care of the Erie County Depart-

ment of Welfare immediately irregardless of previous statements as a right of emancipation.

Sincerely,

MICHELE PICKERING,
Michele Pickering.

Sworn before me on this 8th day of Feb. 1979.

PAULA A. RUGG
Notary Public, State of New York
Qualified in Wyoming County
Commission Expires March 30, 1979

Supreme Court, U. S.
FILED
FEB 14 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1102

JAMES L. PICKERING,
Petitioner-Appellant,

v.

COUNTY OF ERIE, NEW YORK,
Respondent-Appellee.

MOTION TO DISMISS OR AFFIRM

T.J. SZYMANSKI, Erie County Attorney
Attorney for Respondent-Appellee
25 Delaware Avenue-7th Floor
Buffalo, New York 14202

CHARLES L. SAWYER,
Of Counsel.

INDEX.

PAGE

JURISDICTIONAL STATEMENT 1

ARGUMENT 2

POINT I

THIS APPEAL IS NOT WITHIN THE JURISDICTION OF THIS COURT BECAUSE IT IS NOT TAKEN IN CONFORMITY TO STATUTE OR TO THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES..... 7

POINT II

THE SUPREME COURT SHOULD AFFIRM THE JUDGMENT SOUGHT TO BE REVIEWED ON THE APPEAL ON THE GROUND THAT IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THIS ACTION DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT..... 10

POINT III

IF THE CLAIM BE CONSIDERED IN TORT, IT FAILS TO MEET THE MONETARY THRESHOLD..... 14

CONCLUSION

THE APPEAL SHOULD BE DISMISSED BECAUSE IT IS NOT PROVIDED FOR

PAGE

BY STATUTE AND BECAUSE IT DOES NOT CONFORM TO THE REVISED RULES OF THE SUPREME COURT..... 16

OR

IF DEEMED A PETITION FOR CERTIORARI, IT SHOULD BE DENIED OR, IF GRANTED, THE JUDGMENT SHOULD BE AFFIRMED ON THE GROUND THAT THE QUESTIONS PRESENTED ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT..... 16

APPENDICES:

"A"-Decision of the New York State Supreme Court, Appellate Division, Fourth Department.....

"B"-Opinion of District Court issued October 17, 1978.....

TABLE OF CASES

Allen v. Biggs, 62 F.Supp. 229..... 10
Baltimore and Carolina Line, Inc. v. Redman, 295 U.S. 654..... 10
Cruz v. Beto, 405 U.S. 319..... 13
Haines v. Kernee, 404 U.S. 519 13
Investors Syndicate of American, Inc. v. City of Indian Rocks Beach, Fla., 434 F.2d 871..... 11
Mitchell v. National Broadcasting Co., 533 F. 2d 265 16

PAGE

Monnell v. Department of Social Services of the City of New York, 436 U.S. 658..... 14
Pickering v. Pickering, 58 A.D. 2d 1039 5, 9
Powell v. Jarvis, 460 F. 2d 551..... 13
Saint Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283..... 14-15

STATUTES

New York Social Services Law §372..... 5
42 U.S.C.:
§1981 et seq. 5,8,14
§1984 8
§1985 (subd.3)..... 3,15
28 U.S.C.:
§§1252-1258..... 8
§1330..... 14
§1331..... 15

CONSTITUTION

Article III, Section 2, Para. 2..... 8

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1102

JAMES L. PICKERING,

Appellant,

v.

COUNTY OF ERIE, NEW YORK,

Appellee.

On Appeal from the Second Circuit
Court of Appeals

MOTION TO DISMISS APPEAL OR TO AFFIRM

Appellee (hereinafter County of Erie) moves that the appeal herein taken be dismissed (a) pursuant to Rule 16(1)(a) of the Revised Rules of

the Supreme Court of the United States on the ground that said appeal is not within the jurisdiction of this Court because it is not taken in conformity to statute or to the United States Supreme Court rules or, (b) to affirm the judgment sought to be reviewed on the appeal, pursuant to Rule 16(1)(c) of the Revised Rules of the Supreme Court of the United States, on the ground that it is manifest that the questions on which the decision of this action depends are so insubstantial as not to need further argument.

ARGUMENT

This appeal is from a judgment of the Second Circuit, Court of Appeals, that affirmed the judgment of the United States District Court for the Western District of New York which dismissed Appellant James L. Pickering's

(hereinafter Pickering) complaint and amended complaint ("complaint ammendae") for failure to state a cause of action under 42 USC §1985 (subd. 3), commonly known as the United States Civil Rights Act and also because it failed to show monetary jurisdiction.

Pickering's jurisdictional statement alleges that since he demanded a trial by jury, the District Court lacked the authority to grant the County's motion to dismiss and, further, that the District Court's misfiling of his amended complaint indicates that the Court did not even look at the alleged documentary evidence in his amended complaint before granting the motion. Pickering also repeats various allegations in the statement which were made in his complaint and amended complaint and which have already been considered by two courts.

Since the facts of this case are important and, Pickering's statement is not adequately to apprise the Court thereof, the following matters of record which were set forth in briefs to the District Court and to the Circuit Court of Appeals are repeated for the Court's convenience.

Pickering was directed by an order of the Family Court of Erie County to make support payments of $100 a week to his wife and seven minor children. Later, when circumstances changed, the order was modified by Family Court to $70 a week. Pickering appealed this order to the Appellate Division, Fourth Department, of the New York State Supreme Court, claiming that Family Court had no authority to issue the order and that his wife had forfeited her right to support because she had abandoned him and the children. The Appellate Divi-

sion affirmed the Family Court order (Pickering v. Pickering, 58 AD2d 1039, 397 NYS2d 508 [1977]). Pickering has made no effort to seek further appeal of this decision in the New York courts.

During this same time an issue arose concerning Pickering's request to review an official file kept by the Erie County Department of Social Services pertaining to his daughter Michele. He was denied access to the file because New York State law mandates that the file be confidential. (N.Y. Social Services Law §372 [McKinney's 1976.]) Pickering was advised that he could seek judicial review of this decision, but made no effort to do so. He then commenced an action in Federal Court based on alleged violation of his rights under 42 USC §1981 et seq. The County made a motion to dismiss for failure to state a cause of action which was granted

on October 17, 1978 with leave to Pickering to amend the complaint within 60 days. Pickering timely served an amended complaint entitled "complaint ammendae" which was apparently misplaced or misfiled by the District Court, for on January 11, 1979, it issued an order finally dismissing Pickering's cause of action for failure to amend within 60 days.

On January 12, 1979, however, the Court sent a letter to the parties in which it stated the "complaint ammendae" would be considered as a motion to vacate the judgment of January 11, 1979.

On February 9, 1979, Pickering argued his case in District Court before John T. Curtin, who asked Pickering to add anything of substance he had to the allegations contained in his complaint and "complaint ammendae". After hearing Pickering's oral argument, the Court

vacated its January 11, 1979 order and then granted the County of Erie's motion to dismiss with prejudice. On May 18, 1979 there was a meeting before Judge Curtin to settle the order, at which time the County explained in detail the proposed order and judgment to Pickering, who agreed in open court to their form. Pickering appealed this order and judgment to the United States Court of Appeals for the Second Circuit, which affirmed on November 13, 1979.

POINT I

THIS APPEAL IS NOT WITHIN THE JURISDICTION OF THIS COURT BECAUSE IT IS NOT TAKEN IN CONFORMITY TO STATUTE OR TO THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

Pickering seeks review by an appeal of right under this Court's appellate jurisdiction, of the Circuit Court of Appeals judgment affirming the dismissal of his complaint and amended complaint. The exercise of the Supreme

Court's appellate jurisdiction is specifically restricted by the United States Constitution to those situations specified by Congress (U.S. Const., Art. III, §2 ¶2). Congress has enacted laws governing this appellate jurisdiction (28 USC §§1252-1258). Neither under 28 USC §§1252-1258 nor under the Civil Rights Act, (42 USC §1981 et seq.) is there any provision that allows Pickering to bring an appeal of right. This is not an appeal under 28 USC §§1253, 1254 or 1257. Furthermore, the Civil Rights Act states that review by Court of a violation under that Act shall be the same as is provided by law for the review of other causes in the Supreme Court (42 USC §1984). Pickering's appeal, therefore, should be dismissed as improvidently granted because there is no appellate jurisdiction of right.

Pickering has failed also to conform his appeal to the Revised Rules of the Supreme Court of the United States in that: (a) he failed to include in his petition the proof of service required by Rule 13(2) and Rule 33(3) and (b) he failed to include in his petition the opinion of Hon. John T. Curtin which was issued with the October 17, 1978 order dismissing the complaint with leave to amend, and the opinion of the Appellate Division of New York State Supreme Court (Pickering v. Pickering, 58 AD2d 1039, case 100). Such opinions are necessary to ascertain the basis of the judgment from the Court of Appeals, and are therefore required by Rule 15(1)(h).

Since Pickering may not appeal of right to this Court and since he has failed to conform his statement/petition to the Rules of the Supreme Court, his appeal must be dismissed.

POINT II

THE SUPREME COURT SHOULD AFFIRM THE JUDGMENT SOUGHT TO BE REVIEWED ON THE APPEAL ON THE GROUND THAT IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THIS ACTION DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

Pickering's right to a jury trial, which in an action under 42 USC §1985 is guaranteed by the Seventh Amendment was not violated by granting the County's motion to dismiss. Whether a complaint states a cause of action upon which relief can be granted is a question of law for the court. (See Baltimore and Carolina Line, Inc. v. Redman, 295 U.S. 654, 657; Allen v. Biggs, 62 F. Supp. 229) Here Pickering's complaint and amended complaint failed to meet the legal challenge of the common law demurrer: If every fact alleged by the pleader be taken as established, the pleader is still entitled to no relief against the

opposite party. (Investors Syndicate of America, Inc. v. City of Indian Rocks Beach, Fla., 434 F.2d 871)

Picerking's allusions to the treatment received from the District Court, implying that his treatment was less than fair, especially since he was appearing pro se, is directly refuted by the facts.

The Court issued an opinion with its first order dated October 17, 1978 dismissing the complaint for failure to state a cause of action which clearly stated the deficiency of Pickering's complaint and gave him 60 days in which to remedy it. While the Court did misfile his "complaint ammendae", no harm resulted because it notified the parties one day after the January 11, 1979 order was issued that a motion to vacate that order, based on the amended complaint would be heard on February 9,

1979. Pickering, on February 9, 1979, in a much more articulate manner than would appear from his complaint and amended complaint, orally argued his case before the District Court. It was only after hearing this argument, that the Court found there was no cause of action. In any event, the sufficiency of his pleadings was reviewed on appeal.

Pickering's pro se status is one of choice and not circumstance in that he does not lack nor claim to lack the financial means to hire counsel. Deference must be given to pro se complaints for they may not have the legal technicalities found in a pleading prepared by counsel. However, where not only the complaint and amended complaint, but even oral argument by a pro se plaintiff failed to set forth facts which would entitle one to relief, then even a

pro se complaint must fail. (Haines v. Kernee, 404 U.S. 519, 520, Cruz v. Beto, 405 U.S. 319, 322)

Pickering's complaints alleged in conclusory terms the existence of a "constructive conspiracy" but he stated no facts to support this either in his pleadings or on oral argument.

Therefore, the District Court dismissed citing Powell v. Jarvis (460 F. 2d 551).

Pickering orally, and in writing made mention of an injudicious remark made by the Family Court Judge pertaining to him which is presented in the Family Court transcript, as evidence of the "conspiracy". Obviously, if "conspiracy" existed this injudicious remark would have been a certain candidate for editing out of the official transcript.

Furthermore, Pickering failed to allege that any conduct of County personnel involved was in furtherance of

official County policy. According to Monnell v. Department of Social Services of the City of New York (436 U.S. 658), a municipality, cannot be held liable under 42 USC §1981 et seq. on a theory of respondent superior. Based on the above-mentioned reasons the District Court properly dismissed Pickering's complaint and amended complaint for failure to state a cause of action upon which relief can be granted.

POINT III

IF THE CLAIM BE CONSIDERED IN TORT, IT FAILS TO MEET THE MONETARY THRESHOLD.

Since the County is not liable under 42 USC §1981 et seq., then $10,000 is required for subject-matter jurisdiction under 28 USC §1330. An allegation of unliquidated damages must be carefully examined to ensure the jurisdictional amount is made in good faith. (See, Saint Paul Mercury Indemnity Co. v.

Red Cab Co., 303 U.S. 283, 288-289) Pickering stated no factual basis for the $5,000,000 for mental anguish damages so these must be viewed as a claim not made in good faith. Pickering also alleged in his pleadings that loss wages result from the Family Court order. However, the Family Court order merely guarantees he expend part of his income in a proper manner, i.e. to provide food for his family.

Therefore, Pickering does not meet the $10,000 requirement of 28 USC §1331 and the Court properly dismissed his pleadings for lack of subject-matter jurisdiction.

Upon reading both the complaint and amended complaint it becomes obvious that Pickering was, and still is, very angry about the Family Court order that requires him to support his family and that this action based on 42 USC §1985 (subd. 3) was brought to have that order

collaterally reviewed by the Federal Court system. The Court of Appeals for the Second Circuit has held such review is impermissible [Mitchell v. National Broadcasting Co., 533 F.2d 265 (2d Cir.)]. There is no valid ground for an appeal.

CONCLUSION

THE APPEAL SHOULD BE DISMISSED BECAUSE IT IS NOT PROVIDED FOR BY STATUTE AND BECAUSE IT DOES NOT CONFORM TO THE REVISED RULES OF THE SUPREME COURT.

OR

IF DEEMED A PETITION FOR CERTIORARI, IT SHOULD BE DENIED OR, IF GRANTED, THE JUDGMENT SHOULD BE AFFIRMED ON THE GROUNDS THAT THE QUESTIONS PRESENTED ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

Respectfully submitted,

T.J. SZYMANSKI
County Attorney, Erie County
Attorney for Appellee,
25 Delaware Avenue-7th Floor
Buffalo, New York 14202.

CHARLES L. SAWYER,
of Counsel,
JUSTYN E. MILLER,
ROGER D. AVENT,
of the Brief.

APPENDIX "A"
Decision of the New York State Supreme Court,
Appellate Division, Fourth Department.

5 E A.D. 2d

provided in explicit terms that West Lake was to be reimbursed to the extent of any mortgage tax credit accorded the purchaser. Although there is no true ambiguity in the quoted clauses, any ambiguity therein should be resolved against West Lake, the draftsman of the doubtful provisions. (*Hodom v Stearns*, 32 AD2d 234.) (Appeal from judgment of Monroe Supreme Court—submitted controversy.) Present—Simons, J. P., Dillon, Hancock, Denman and Goldman, JJ.

100 JAMES L. PICKERING, Appellant, v RITA PICKERING, Respondent.—Order unanimously affirmed, without costs. Memorandum: Petitioner appeals from an order denying his motion to terminate an order directing him to support his wife and five children. He alleges that the order is invalid because the parties are living together and, conversely, that it is invalid because his wife has abandoned him. A man has a continuing obligation to support his wife and children according to his means (Family Ct Act, §§ 412, 413) and in the absence of a pending matrimonial action, Family Court has exclusive jurisdiction of proceedings to compel support payments (Family Ct Act, § 411). The court may grant a support order when the parties are living together or apart, unless the wife has forfeited her right to support by abandoning her husband (see *Levy v Levy*, 22 AD2d 794). Petitioner asserted at oral argument that his wife had abandoned him and the children, but there is no evidence in the record that she has, and Family Court properly denied the motion to terminate support payments. We have considered the other points raised by petitioner and find them without merit. (Appeal from order of Erie County Family Court—support.) Present—Simons, J. P., Dillon, Hancock and Goldman, JJ.

101 LARRY S. INGALLS, as Father of WADE F. INGALLS, an Infant, Respondent, v JOAN A. INGALLS, Appellant.—Order unanimously affirmed, without costs. Memorandum: Petitioner and respondent were married in 1969 and their son, Wade, was born on January 28, 1971. In May, 1973 respondent, with Wade, left the marital residence. Thereafter petitioner brought a habeas corpus proceeding in Jefferson County Family Court seeking custody of Wade, and a hearing was held thereon in the spring of 1974. The court did not award custody to either parent to the exclusion of the other but directed that the child should live with his mother and granted broad visitation privileges, including weekends and the summer months, to the petitioner. At the time of that hearing respondent was pregnant and it was admitted that one Terry Shelly, who was a frequent visitor to respondent's residence, was responsible for the pregnancy. Immediately subsequent to the court's earlier award, respondent took up permanent residence with Terry Shelly and soon thereafter a child, Darin, was born to them. In this proceeding, instituted in January, 1975, petitioner sought custody of Wade based upon changed circumstances. Respondent appeals from Family Court's award of custody to petitioner, contending, *inter alia*, that the court abused its discretion in basing its award upon

APPENDEX "B"
OPINION OF DISTRICT COURT ISSUED
OCTOBER 17, 1978.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES L. PICKERING
Hand Road
Chaffee, New York 14030,

Plaintiff,

-vs- Civ-78-203

COUNTY OF ERIE, N.Y.
95 Franklin Street
Buffalo, New York 14203,

Defendant.

Plaintiff has filed a pro se complaint alleging that the County of Erie has conspired to violate his rights under the Sixth and Ninth Amendments and the Contract Clause of the United States Constitution. The "specific acts" which plaintiff refers to in his complaint consist for the most part of conclusory allegations that Family Court and Department of Social Services personnel "maintain a system" which interferes with his rights. The only allegations which have any specificity are allegations that a certain social worker gave false testimony in Family Court and that Family Court personnel "obstruct justice" by maintaining a system of hand signals whereby "pertinent testimony is eliminated from the official record." However, plaintiff fails to indicate how he has been personally injured by these occurrences.

The complaint is dismissed upon motion of the defendant for failure to allege facts sufficient to support his claims. Powell v. Jarvis, 460 F.2d 551 (2d Cir. 1972). Plaintiff will be allowed 60 days to amend his complaint to remedy the above-mentioned inadequacies.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: October 17, 1978